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March 28, 1980

To: Joint Select Committee on Indian Land Claims
From: Richard S. Cohen, Attorney General
Re: Proposed Indian Land Claims Settlement

In response to questions posed to me by Senator Collins and Representative Post by their letter of March 26, I am pleased to provide the following responses:

1. What are the major consequences of failing to enact this bill?

As I have said in my earlier statements, failure to enact the Maine Implementing Act could have serious consequences for the State and its citizens. In my opinion, if the matter is not settled, the claim will go to trial. The cost of a trial to the State alone, not including private defendants, would probably exceed \$1 million. It would take roughly 5 to 6 years to get a final decision from the United States Supreme Court. During that time titles and mortgages in the claim area would be in turmoil, and municipal bonds would not be marketable. If it goes to trial there is a serious risk of the State and private landowners losing a substantial tract of land and being ordered to pay money damages.

In addition, if the matter goes to trial and if land is awarded to either Indian Tribe, the State will in all probability be unable to enforce any of its laws on those lands.

2. What special provisions exist for Indians attending the University of Maine, such as tuition arrangements, and will they continue after settlement of the claim?

As we understand it, under the current policy of the University of Maine, Indians pay no tuition or fees. This

exemption is not required by law, however, and can be continued or terminated at the option of the trustees.

3. What is the status of Indian Territory after settlement, either organized or unorganized, and what are the tax consequences? Will it result in any tax exemptions? What will be the effect on the Forest District, the Spruce Budworm District, and the Tree Growth Tax Law?

The Indian Territories will be unique legal entities. Although they will not be called municipalities they will, with a few exceptions, be the functional equivalents of municipalities. In effect the Territories will be organized areas of the State and will no longer be considered unorganized territory of the State.

The Unorganized Territory Educational and Service Tax, Title 36 M.R.S.A., Sections 1601-1605, will not apply to the Indian Territory. Since the Indian Territories will be the functional equivalent of organized areas, these taxes will not apply to the Territory. We have been advised that this will result in a loss of approximately \$170,000 per year in tax revenues to the State. However, since the Territory will not receive services as unorganized areas, we would anticipate a commensurate reduction in State costs.

With respect to other taxes, the Tribes will pay all State, county and district taxes of any kind applicable to any municipality. These taxes will be called a fee but paid in the same amount as the usual tax. Income to the Tribes from the Federal Tribal Trust Fund will be exempt from State income taxes as is any income to any other municipality. Any land owned by a tribe in a town can be taxed by the town and taken for non-payment of taxes.

Any land acquired by the Tribes in an area currently designated as within the Spruce Budworm District will remain within that District and will pay the taxes. It is unclear, however, whether the Indian Territories will be within the Forestry District because of the way in which the Maine Forestry District is defined by the present law. However, the Legislature is free to amend the Maine Forestry District enabling act and specifically include the Territories or the Tribes may themselves opt to be included in the Forestry District.

With respect to the Tree Growth Tax Law, it will apply within the Indian Territory to the same extent and in the same manner as other municipalities. To the extent the Tribes chose not to levy property taxes within their Territories, the Tree Growth Tax Law is of no practical effect in those areas.

4. How was the price of land to be purchased under the settlement negotiated, and who was involved?

Negotiations were conducted directly between landowners and the Tribes. Since all parties agreed that any purchase of land would be funded by Congress, we did not believe it appropriate

to participate in those negotiations. In addition, I believe that former Governor Longley was of the view that the State should not participate in land acquisition negotiations. I agreed with Governor Longley's position and have acted consistent with it. Only Congress has authority to decide how much money should be appropriated for this purpose. I am confident that Congress will carefully scrutinize the requested appropriation.

5. What will the State's obligation for welfare, education, and other services be after the settlement? Will the Federal Government assume any of these obligations?

The Department of Human Services is required to reimburse any municipality 90% of the general assistance costs that exceed .0003 of that municipality's state valuation. This same system will apply to the Tribes in their respective Territories. We believe the current general welfare statutes provide sufficient safeguards to prevent the Tribes from abusing that system. If, however, abuses do occur, the Legislature is free to amend the general welfare laws to correct them. In this regard, however, it should be noted that of the budget of the Maine Department of Indian Affairs for F.Y. 1979-80, an estimated \$450,000 can be classed as general welfare assistance. It is apparent therefore that the State has traditionally spent substantial sums for these programs on the reservations. Under the Implementing Act these direct appropriations will cease and the Tribes will work within the present system as any other municipality does.

The State of Maine currently funds nearly the entire cost of education on the existing Reservations. This cost for fiscal year 79-80 was approximately \$770,000. After the settlement, the Federal government will contribute heavily to the cost of education on Penobscot Territory and Passamaquoddy Territory. For fiscal year 80-81 the Federal government is expected to contribute approximately \$1,126,000 to the cost of education on the two territories. We anticipate therefore that the State will have little if any financial obligation for education.

Another State expense for municipalities is in the area of road maintenance. Again, however, we expect that under the proposed Implementing Act, the State will realize a net savings. Under present law all roads on the Passamaquoddy and Penobscot Reservations are designated as state highways, no matter how small, and as a result the State pays all costs of maintenance. Under the Implementing Act, this provision will be repealed and the State will have the option of designated state highways and state-aid roads within Indian Territory as it does in any other municipality. While we do not have cost estimates, it seems reasonable to assume that such a scheme will result in a cost savings to the State.

6. Will jurisdiction and ownership of any "Great Ponds" be affected by the settlement?

Ownership of and access to Great Ponds will be completely unaffected. The waters and subsurface lands will remain under State ownership. The general common law right of access to Great Ponds will apply to any of these ponds.

Fishing jurisdiction on Great Ponds, 50% or more which shoreline is within Indian Territory, will be vested in the Tribal-State Commission with authority in the Commission to adopt regulations on season, bag limits, size limits and methods. This regulatory authority is subject to the residual power of the Commissioner of Inland Fisheries and Wildlife to supercede Tribal-State Commission regulations if he determines that the regulations are harming or there is a reasonable likelihood that they will harm fishing stocks in other water.

7. May Congress alter the amount of money in the settlement, and what is the consequence if it is altered? What is the consequence if Congress appropriates no money after the Legislature has enacted the claims bill?

Congress' power in Indian law is absolute and as a matter of constitutional power Congress can extinguish the claim on any terms that it wishes. Whether an alteration would affect the chances of enactment of the bill is a matter of political judgment and would depend upon the magnitude of the reduction. I would, however, expect that the Tribes would oppose any bill that appropriates less than that to which they agree. Congress could nevertheless provide less money if it wished to do so, though I would not expect Congress to go so far as to extinguish the claim without any compensation.

With respect to the State bill, although it contemplates an appropriation by Congress as a precondition to its taking effect, since Congress' power is absolute, Congress could ratify or otherwise implement the Maine Act without regard to that limitation.

8. What will be the effect of the settlement on "camp lots" leased on lands transferred to the Indians? What policies on future leasing have been agreed to?

We do not know the policy of all the landowners but we understand that some have agreed not to sell lands which are leased for camp lots. We also understand that Dead River and Great Northern will give camp owners the opportunity to purchase their lots and thus except those properties from the Indian Territories. To the extent such lands are sold, the

Tribal Negotiating Committee has represented to us the Tribes' intention to continue the leasing policies previously employed by the timber companies. This representation is not binding, however, and the Tribes could refuse to renew leases after the termination dates just as any other landowner can.

9. What are the estimated expenses of the Tribal-State Commission and who will pay them?

The Governor has suggested that the Commission's initial expenses not exceed \$3,000.00 per year. These costs are proposed to be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. The amount and source of monies can be changed by the Legislature if circumstances require.

10. (A) Will the fish and game provisions of the bill establish two independent licensing authorities in the Territory and Reservation areas?

Yes. The Tribe will have authority to regulate hunting and fishing in small ponds and may require a license. The Tribal State Commission will have authority in large ponds, rivers and streams and may require a license.

(B) Will Maine residents have to purchase two licenses?

The Tribe and Commission are authorized, but not required, to require licenses on lands or waters under their jurisdiction. These licenses would be separate and distinct from State licenses. However, State licenses are not required to hunt or fish in Indian Territory or waters under Tribal-State Commission control.

(C) Will non-Indians be entirely barred?

Whether non-Indians are barred from the Territory depends on tribal policy. As landowners the Tribes will have the same power to open and close their lands as paper companies do. Since the Tribes may buy land anywhere in the State which will not be included in the Tribal Territory, they will, like any other landowner, be able to use these lands in any legal manner.

(D) How will the licensing and regulatory authority of the Commissioner of Inland Fisheries and Wildlife be affected?

As a general rule, state fish and game laws regarding hunting and fishing will not apply in Indian Territory. Taking of game and fish is controlled in the first instance exclusively by the Tribe or Tribal-State Commission. However, the Commissioner can do surveys, can check game registrations and can take remedial

steps, including superceding those regulations, if he finds Tribal or Tribal-State Commission regulations to be harming or that there is a reasonable likelihood that they will harm other fish or wildlife resources.

(E) May the Indians close their lands to hunting and fishing?

Yes.

(F) How does this authority compare to that of private landowners?

Like private landowners, the Tribes can close their lands. Unlike private landowners they can adopt separate hunting and fishing regulations as explained above.

(G) Who and how will Indian hunting and fishing regulations be enforced?

Tribal law enforcement officers will be equivalent to municipal police officers and within the Indian Territory the Tribal police can enforce all laws including Tribal ordinances on hunting and fishing and regulations of the Tribal-State Commission. All other state law enforcement officers, including Fish and Game Wardens, can also enforce Tribal-State Commission regulations and other laws of the State.

Indian violators of Tribal fish and game ordinances will go to Tribal Court. Non-Indian violators will go to State Court. All violators, Indian and non-Indian of Tribal-State Commission regulations go to State Court.

Tribal law enforcement officers will also be subject to the mandatory training requirements applicable to other local police officers.

11. How will the Tribal School Committees be selected, what specific powers will they have and who will pay education expenses?

Tribal school committees are currently provided for by special laws. Those laws will be repealed and the Tribes will be authorized to create their own school committees as any other municipality does. They will be subject to general state education laws, but as a transitional measure, and until those new committees are created, the current school committees will continue in operation.

Educational costs will be a shared Tribal-State expense using the same formulas and methods used in any other municipality. Currently all Indian educational costs are borne by the State, with the appropriation for the current fiscal year amounting to \$770,000. We have been informed that the U.S. Bureau of Indian Affairs anticipates expending more than \$1,100,000 per year on Indian education beginning October 1, 1980. Upon inquiries to the Maine Department of Educational and Cultural Services, we have been advised that this federal payment will more than exceed the anticipated state and local share of education for comparable municipalities.

12. If Indians purchase a business or building with state funds or guarantees and it fails, may the state or other creditor take it to meet the outstanding loans? May lands in the Territories or Reservations be attached by creditors? If not, what remedies are available to enforce payment of debts?

The answer to these questions are not found in the Maine Implementing Act but are contained in the draft of the Federal bill to be proposed to Congress. Lands of the Tribes within the Indian Territories may not be taken or attached to pay creditors, regardless of whether the creditor is the State or other person. However, creditors are entitled to be paid out of Tribal Trust Fund income. Thus a creditor can sue the Tribe for a debt. If the Tribe fails to pay the judgment, the creditor can request the Secretary of Interior to pay the judgment out of the Trust Fund income. If the Secretary refuses to pay, the creditor can sue the Secretary. We would conservatively estimate the annual Trust Fund income at \$1,250,000 for each Tribe which should be ample to pay most debts.

Lands owned by the Tribe outside their Territory are not subject to the same protection and can be foreclosed against, attached or taken for non-payment of taxes or debts. Individual members of the Tribes will not own Tribal land but will occupy parcels assigned to them. Their status is in some respects similar to a person who leases land. The land such individuals occupy cannot be taken or attached by creditors.

13. May Tribal authorities open and close roads through the Territory or Reservation lands, and may they charge for road use?

Private roads owned by the Tribe can be open or closed at will. County or State roads cannot be closed and the Tribe cannot charge fees. County or State roads, whether owned in fee or held under an easement, will not be transferred to the Tribe but will remain under control of the State or County.

14. Are non-Indians residing on Territory or Reservation lands liable for taxes imposed by Tribal authorities? Do they participate in selecting those Tribal authorities or in determining the tax rates?

The real and personal property of non-Indians residing on the Territories is subject to taxes imposed by the Tribal Authorities within those territories. Non-Indians residing on the Territories do not have the right to vote in Tribal elections but the Tribes could elect to extend that right to non-members. However, they are entitled to receive any municipal or governmental services provided by the Tribe or Nation or by the State, with minor exceptions, and are entitled to vote in National, State and County elections in the same manner as any tribal member.

15. What is the effect of the settlement on state and Federal authority over coastal or marine waters?

The only coastal land that will be owned by either Tribe is the current Pleasant Point Reservation of the Passamaquoddy Tribe. By virtue of this ownership, the Passamaquoddy Tribe will have authority to enact shellfish conservation ordinances just as other municipalities do in the coastal lands immediately adjacent to Pleasant Point. As in the case of municipalities generally, the enactment of such ordinances will be subject to approval of the Commissioner of Marine Resources. The Tribes will have no other rights in coastal or marine resources other than any other person or entity.

No other coastal lands will be included in the Indian Territory. To the extent the Tribes might buy other coastal land, they have no more rights in the coastal lands or marine resources than any other person.

16. What specific municipal powers and duties are given to the Tribe and Nation under this bill?

The effect of the bill is to make the Indian Territories the functional equivalent of a municipality. The bill confers on the Tribes within their Territories those powers and duties possessed by municipalities under "home rule." Those powers and duties include but are not limited to ordinance powers, taxation powers, home rule powers, the power to sue and be sued and the power to dispense and receive services.

17. What specific "rights incident to ownership of land" in Indian Territory will the Indians gain under this bill?

The quoted provision, which is found in the last sentence of Section 6207(1), means that the Tribes have all the same rights in their property as any other landowner, including the right to prevent hunting, trespassing or snowmobiling, to lease the land, sell stumpage off it, or develop it.

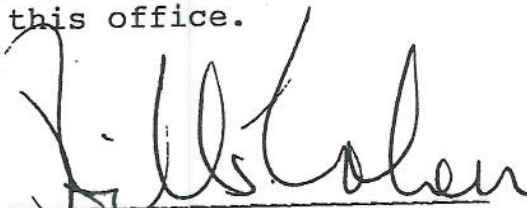
18. What provisions govern the grounds and procedures for civil actions, or custody or domestic relations actions that are within the jurisdiction of the Tribes?

The Tribes are free to establish their own procedures without State regulation but subject to the Federal Indian Civil Rights Act. We assume the Tribes will adopt their own laws regarding minor civil matters and domestic relations as do other Tribes in the county. We understand that the Penobscot Nation now has an operational Tribal Court, employs a lawyer as Tribal judge and that the Court utilizes the Maine Rules of Civil Procedure.

19. What will be the financial obligations of the state after enactment but prior to the effective date of this Act? Will there be an appropriation for transition during FY 1981 or 1982?

The existing State appropriation for Indian programs ends at the end of the current fiscal year. It is unclear whether the State has a legal obligation to fund some or all of the existing Indian programs, until such time as the settlement is implemented and federal funds flow to the Tribes. However, we understand that the Governor is preparing a transitional appropriation for FY 1981 to continue Tribal assistance. Federal funding begins on October 1, 1980, the start of the federal fiscal year.

I hope the answers provided herein are helpful. Please feel free to inquire further of this office.



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